



August 24, 2022

Via E-mail

Mr. David Albright
Manager, Groundwater Protection Section
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: Response to EPA Request for Confidential Business Information Substantiation from an Affected Business, Underground Injection Control (UIC) Class VI Permit Application No. R9UIC-CA6-FY21-1 (A1/A2)

Dear Mr. Albright:

I am responding to your letter dated July 13, 2022, requesting substantiation of claims of confidential business information ("CBI") asserted in conjunction with Safe Drinking Water Act ("SDWA") Underground Injection Control ("UIC") Program Class VI permit application No. R9UIC-CA6-FY21-1 (A1/A2), submitted to the U.S. Environmental Protection Agency Region 9 ("EPA") by Carbon TerraVault 1, LLC, a wholly owned subsidiary of California Resources Corporation ("CRC," together the "Companies"). This response is submitted timely based on the email of August 1, 2022, from Nathaniel Boesch, Office of Regional Counsel, granting a 15 working day extension to the original response deadline of August 3, 2022 (*i.e.*, 15 working days after July 13, 2022¹). Provided below is the Companies' response to EPA's July 13, 2022 request and justification regarding the need to protect the confidential business information ("CBI") from disclosure.

As described below, the information identified as CBI in CRC's Class VI permit application No. R9UIC-CA6-FY21-1 (A1/A2) should not be disclosed to the public because the information is exempt from disclosure under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552. Specifically, the information constitutes "trade secrets and commercial or financial information obtained from a person and privileged or confidential," 5 U.S.C. § 552(b)(4), the disclosure of which would harm an interest protected by exemptions enumerated in the statute. EPA thus can and should withhold this information from disclosure. *Id.* § 552(a)(8)(A). This conclusion is supported by the discussion below, which is organized as follows: (I) a summary of the confidential business information submitted, (II) a recitation of the relevant legal requirements for exemptions from disclosure under FOIA and application to the confidential business information submitted, and (III) responses to the specific questions presented in EPA's July 13, 2022 letter.

Also, as a threshold matter, the Companies are unaware of whether EPA has received a FOIA request seeking all or any portion of the CBI submitted by the Companies. In the event that EPA has received or receives such a FOIA request, the Companies hereby request that EPA

¹ Working days exclude weekends. 40 C.F.R. § 2.201(o).

withhold the information designated by the Companies as CBI when responding to any such FOIA request. And, in the event that EPA decides to release any portion of the Companies' CBI, the Companies hereby request that EPA provide them with sufficient notice to take whatever measures the Companies deem necessary in order to prevent any such release. The Companies expressly reserve all rights to file an action in their own names and on their own behalf to prevent the release of any and all records.

I. Summary of Confidential Information Submitted

As part of the UIC Class VI permit application No. R9UIC-CA6-FY21-1 (A1/A2), the Companies submitted certain information in April 2022, that is confidential and the disclosure of which would harm the Companies' competitive interests. This information was thus redacted as confidential business information (CBI). Specifically, the Companies claimed CBI protections from disclosure over and redacted: (1) portions of its corrective action plan table (*"Appendix 1 to Attachment B: Area of Review and Corrective Action Plan"*); (2) portions of its plugging plan, related to well-specific plugging plan information (*"Appendix 2: P&A Procedure for Wells to be Abandoned Prior to Injection"*); and (3) the entirety of its monitoring well schematics and plugging details (*"Appendix 1: Injection and Monitoring Well Schematics and Plugging Details Elk Hills A1-A2 Storage Project"*).

In view of the Companies' desire to effect the greatest possible transparency while maintaining necessary protections over its most critical CBI, the Companies have determined that some portions of the Information previously marked as CBI can instead be treated as non-confidential. To that end, the Companies are withdrawing all CBI claims with respect to the injection and monitoring well schematics and plugging details presented in *Appendix 1: Injection and Monitoring Well Schematics and Plugging Details Elk Hills A1-A2 Storage Project*. Accordingly, the remainder of this letter does not pertain to that document. Additionally, the Companies are revising their CBI claims with respect to their well-specific plugging plans to reduce the amount of information redacted as CBI. Whereas the well-specific plugging plans provided on pages three through six of *Appendix 2: P&A Procedure for Wells to be Abandoned Prior to Injection* were previously redacted as CBI, the Companies are submitting a new version of this document with CBI redactions limited only to the well identifier names and location information. Limiting the CBI redactions in this document to just this well identifier and location information allows disclosure and transparency of the greatest amount of information while continuing to protect the Companies' interests in its CBI with respect to the plugging plans. Maintaining the CBI redactions for the well identifiers and location information is necessary, however, to preserve the Companies' CBI claims over the CBI redacted portion of the corrective action plan table in *Appendix 1 to Attachment B: Area of Review and Corrective Action Plan*. Disclosure of the plugging plan well identifier and location information could effectively enable competitors to discern portions of the corrective action plan that are CBI and must be protected from disclosure. Copies of the revised CBI redactions for both *Appendix 1: Injection and Monitoring Well Schematics and Plugging Details Elk Hills A1-A2 Storage Project* and *Appendix 2: P&A Procedure for Wells to be Abandoned Prior to Injection* are submitted herewith.

No changes are being made to the CBI claims over the corrective action plan table presented in *Appendix 1 to Attachment B: Area of Review and Corrective Action Plan*. For this table, the nine (9) columns on the right hand portion of the table remain redacted as CBI, while the nine (9) columns on the left hand portion of the table are not claimed as CBI. The term “Information” as used throughout the remainder of this letter should be understood to encompass the revised CBI claims described in this paragraph.

The Companies clearly asserted claims of confidentiality over the Information at the time of submission and, moreover, provided these files to EPA *via* an alternative process to the Geologic Sequestration Data Tool (“GSDT”) to ensure confidentiality. The Companies have taken efforts to limit the scope of information claimed as CBI to the greatest extent possible including, as discussed above, redacting only certain necessary columns of the corrective action plan table presented in *Appendix 1 to Attachment B: Area of Review and Corrective Action Plan*, withdrawing its initial CBI claims over the monitoring well schematics and plugging details presented in *Appendix 1: Injection and Monitoring Well Schematics and Plugging Details Elk Hills A1-A2 Storage Project*, and resubmitting the well-specific plugging plans provided on pages three through six of *Appendix 2: P&A Procedure for Wells to be Abandoned Prior to Injection* with more limited CBI redactions.

The Information represents significant investment by the Companies in the resource and development of its technical and operational processes and thus is of a type that customarily would be treated as confidential and in which the Companies have a clear commercial interest. Additionally, as discussed in detail below, the Companies have taken steps to ensure the Information has actually been kept confidential, including by asserting a claim of confidentiality in submitting it to EPA. Disclosure of the Information, as described below, is likely to cause substantial harm to the Companies’ competitive position.

II. Legal Analysis in Support of Exemption from Disclosure

The Companies object to disclosure of any portion of the Information submitted as CBI as part of their UIC Class VI permit application No. R9UIC-CA6-FY21-1 (A1/A2), because all of the Information is exempt from disclosure under FOIA. Under FOIA, an agency shall withhold information if it “reasonably foresees that disclosure would harm an interest protected by an [enumerated] exemption” or “is prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i). The Information constitutes “trade secrets and commercial or financial information obtained from a person” that is “privileged or confidential,” 5 U.S.C. § 552(b)(4), and is thus exempt from disclosure under an enumerated statutory exemption. Disclosure of the Information would severely harm the Companies’ resource interests and its competitive position as a first mover with respect to the development of carbon sequestration in an oil field. Disclosure is also prohibited by law pursuant to the Trade Secrets Act. 18 U.S.C. § 1905; *see CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1151-52 (D.C. Cir. 1987) (finding information protected by FOIA Exemption 4 also falls within the Trade Secrets Act scope).² Moreover, the Information is

² Whether this “co-extensive” relationship has been disturbed by the Supreme Court’s broader interpretation of “confidential” information in *Food Marketing Institute v. Argus Leader* is uncertain. 139 S. Ct.

segregated to the extent possible to allow for partial release of the Information to the greatest extent possible while maintaining the Companies' protected interests in its CBI. Accordingly, consistent with FOIA and EPA's implementing regulations, EPA must not, and should not, release any of the Information in response to any current or future FOIA request(s) or otherwise.

a. The Companies' Information is Exempt Under FOIA Exemption 4.

Information protected from disclosure under Exemption 4 must be either (i) trade secret or (ii) "commercial or financial information," "obtained from a person," that is "privileged or confidential." 5 U.S.C. § 552(b)(4). Because the Information falls within this latter category, its disclosure is prohibited by law and would harm the Companies' interests, and thus it must not be disclosed. *Id.* § 552(a)(8)(A)(i).

First, the Information is "commercial or financial information" because, although neither FOIA nor EPA's FOIA regulations define "commercial" or "financial" with respect to Exemption 4, courts construe these terms as having their "ordinary meanings" and include information as long as the submitter has a "commercial interest" in it. *See Pub. Citizen Health Research Grp. V. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *see also Starkey v. U.S. Dep't of Interior*, 238 F. Supp. 2d 1188, 1195 (S.D. Cal. 2002) (finding "well and water related information" is commercial or financial information).³ The Companies have a significant commercial interest in the Information, which represents substantial investment in proprietary techniques to develop a commercially valuable resource, including discerning necessary corrective action measures. The Information thus constitutes "commercial information."

Next, the Information was "obtained from a person" within the meaning of Exemption 4 and EPA's regulations. For purposes of FOIA, a "person" means "an individual, partnership, corporation, association, or public or private organization other than an agency." 5 U.S.C. § 551(2); 40 C.F.R. § 2.201(a). The Information was obtained by EPA from the Companies, both of which are corporate entities clearly meeting the criteria of "person."

Last, the Information is also "confidential." Neither FOIA nor EPA's FOIA regulations define "confidential," however, the Supreme Court has established that "[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4." *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366, 204 L. Ed. 2d 742 (2019). The Information here meets that test. As explained in more detail in Section III below in response to EPA's Questions, the Information was developed for the purpose of the Class VI UIC permit application and represents the Companies' significant investment in the development of expertise to develop resources and

2356 (2019). Regardless, any information that met the pre-*Argus Leader* standard of confidential commercial information under Exemption 4 should remain prohibited by law from disclosure.

³ EPA's regulations do define "business information" to mean "information which pertains to the interests of any business, which was developed or acquired by that business, and (except where the context otherwise requires) which is possessed by EPA in recorded form," 40 C.F.R. § 2.201(c), a standard the Information plainly meets.

determine necessary corrective action measures in view of well characteristics. The Companies are aware of competitor interest in how the Companies have developed this expertise and believe that disclosure of this Information could thus compromise their competitive position. The Companies have also actually treated the Information as private in light of the significance of the Information, taking measures to protect it from disclosure by storing it exclusively on secure private data storage systems and by producing it to EPA only as necessary to support its permit application and, even then, via a separate submission process than the standard GSDT to ensure its continued confidential protection. The Information thus is “confidential.”

Because the Information satisfies all the requisite elements for protection of confidential, commercial or financial information, obtained from a person under Exemption 4, it must not be disclosed. The Information is also properly withheld from disclosure under EPA’s regulations implementing FOIA, which rely directly on the enumerated exemption list in the statute. *See* EPA, *Freedom of Information Act Regulations Update, Final rule*, 84 Fed. Reg. 300,28, 300,30 (June 26, 2019) (repealing EPA’s regulatory list of FOIA exemptions as “unnecessary and redundant of the statute” in favor of “continu[ing] to apply the exemptions found in accordance with 5 U.S.C. 552(b) as appropriate”). EPA has specific rules governing CBI, 40 C.F.R. Part 2, Subpart B, including certain “special rules” applicable to information obtained under the Safe Drinking Water Act. *Id.* § 2.304. These special rules apply to the Information because it was provided to EPA under a regulatory requirement issued to determine whether the person providing it is acting in compliance with the SDWA and the Companies are a person subject to a UIC program. *Id.* § 2.304(b)(1).⁴ The responses to EPA’s Questions detailed in Section III below demonstrate that the Information meets all of the substantive criteria EPA requires for use in confidentiality determinations. 40 C.F.R. §§ 2.208, 2.304(c).

b. Disclosure of the Information Would Harm the Companies’ Interests.

Disclosure of the Information would substantially harm the Companies’ interests.⁵ As explained more thoroughly in response to EPA’s Questions in Section III below, disclosure of

⁴ Although these SDWA-specific provisions govern in the event of a conflict between them and the general CBI provisions, *id.* § 2.202(c), any such conflicts are irrelevant here because the general substantive criteria for confidentiality determinations apply to information obtained under the SDWA, except for information about drinking water contaminants, which is ineligible for confidential treatment, and “voluntarily submitted information,” *id.* § 2.304(e). The Information does not pertain to “the existence, absence, or level of contaminants in drinking water,” and thus is eligible for confidential treatment and nondisclosure. 40 C.F.R. § 2.304(e), (f). The Information also is not “voluntarily submitted information” because its submission was “prescribed by statute or regulation as a condition of obtaining some benefit (or avoiding some disadvantage) under a regulatory program of general applicability, including such regulatory programs as permit, licensing, registration, or certification programs.” 40 C.F.R. § 2.201(i)(2). The Companies submitted the Information as required to support their UIC Class VI permit application and so it was not voluntarily submitted.

⁵ We note that EPA’s substantive criterion pertaining to whether “the disclosure of information is likely to cause substantial harm to the business’s competitive position” is called into question under the Supreme Court’s decision in *Argus Leader*, which explicitly rejected reading a “competitive harm” requirement into the term “confidential” under Exemption 4. *Argus Leader* 139 S. Ct. at 2363. Such questions are of no moment here, however, because this letter clearly explains why disclosure of the Information would cause the Companies substantial harm to their competitive interests.

the Information would compromise the Companies' significant investment in the development of expertise with respect to how to interpret and execute the corrective action plan requirements for its project(s) and its unique competitive position with respect to Class VI permitting for wells located in oil fields, as well as in saline reservoirs. The Companies are also aware of competitor interest in how the Companies have developed this expertise and thus believe that disclosure of this Information could compromise their competitive position by utilizing the Companies' Information to assess their own corrective action requirements and, ultimately, expedite development of projects in the region, increasing the competition the Companies face in securing sources of carbon dioxide. Accordingly, EPA must not and should not disclose the Information. 5 U.S.C. § 552(a)(8)(A)(i).

c. Partial Disclosure is Already Being Made to the Greatest Extent Practicable.

EPA is also required to consider if partial disclosure is possible and, if it determines it is, "take reasonable steps to segregate and release nonexempt information." 5 U.S.C. § 552(a)(8)(A)(ii); *see also* 40 C.F.R. § 2.202(f). Here, the Companies have already accomplished this by making no CBI claims over the vast majority of its Class VI UIC permit application materials, withdrawing the initial CBI claims over the injection and monitoring well schematics and plugging details presented in *Appendix 1: Injection and Monitoring Well Schematics and Plugging Details Elk Hills A1-A2 Storage Project*, and redacting the minimum amount of information possible while maintaining critical CBI from the well-specific plugging plans provided on pages three through six of *Appendix 2: P&A Procedure for Wells to be Abandoned Prior to Injection* and corrective action plan table in *Appendix 1 to Attachment B: Area of Review and Corrective Action Plan*. As discussed in Section I above, maintaining the CBI redactions over the limited well identifier and location information in the well-specific plugging plans provided on pages three through six of *Appendix 2: P&A Procedure for Wells to be Abandoned Prior to Injection* is necessary in order to maintain the Companies' CBI claims over the CBI redacted portions of the corrective action plan table in *Appendix 1 to Attachment B: Area of Review and Corrective Action Plan*.

III. EPA Questions

EPA's July 13, 2022 letter poses 12 specific questions to the Companies with respect to each item or class of information claimed to be confidential. The Companies' responses to the questions in your letter are provided below and support a finding that the Information is confidential and should be protected from disclosure.

- 1. For what period of time do you request that the information be maintained as confidential (e.g., until a certain date, until the occurrence of a specified event, or permanently)? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.**

The Companies request that each item of the Information be maintained as confidential throughout the technical review period and until issuance of the draft permit.

- 2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question number 1?**

The Companies believe that the requested period of confidential treatment--i.e., until a draft permit is issued--will provide sufficient protection over their interest in the development of the process to assess corrective action requirements and associated plugging plan details given their first-mover position associated with redeveloping existing oil and gas wells for use in carbon storage. The Companies anticipate that, by the time a draft permit could be issued and the claim for confidential treatment of the Information expires, other competitors will have already developed independent processes for corrective action assessment. At the same time, this temporally limited confidentiality claim will balance the interest of the public and stakeholders in an ability to understand and assess the Companies' plans for corrective action and well plugging.

- 3. Has EPA, another federal agency, or court made any determination as to the confidentiality of the information? If so, please attach a copy of the determination.**

No, the specific Information submitted to EPA as confidential has not necessitated any determination(s) by another such authority with respect to its confidentiality and, therefore, no such determinations have been made.

- 4. Is the information contained in any publicly available material such as patents or patent applications, publicly available databases (including state databases), promotional publications, annual reports, or articles? If so, please identify the publicly available information and its location (e.g., patent number or website address).**

No, the Information submitted to EPA is not available publicly, including via any publicly available databases.

- 5. Has your company taken reasonable measures to protect the information claimed as CBI? If so, please identify the measures or internal controls your business has taken to protect the information claimed as confidential.**
 - a. Non-disclosure agreement required prior to access.** No
 - b. Access is limited to individuals with a need-to-know.** Yes
 - c. Information is physically secured (e.g., locked in a room or cabinet) or electronically secured (encrypted, password protected, etc.).** Yes

d. Other internal control measures. Yes. (If yes, please explain.)

Yes, the Companies have taken reasonable measures to protect the Information. The Information is maintained on CRC's internal data storage systems and is not accessible by persons outside the Companies. These confidential files are stored on secure servers and in secure file locations to which access is limited to only the Companies' personnel associated with the project, each of whom have secure employee logins. Moreover, in submitting the Information to EPA as necessary to support the Companies' permit application, the Companies took additional precaution to transmit the information to EPA via a manner other than the GSDT used for the remainder of the permit application materials, in order to ensure its continued confidential treatment.

6. Does your company customarily keep the information private or closely-held? If so, please explain the basis for your response.

This Information and the data contained therein is always considered proprietary and confidential and thus closely-held by the Companies. As noted in response to Question 5 above, the Information is not accessible outside of CRC's internal data storage systems.

7. At the time you submitted the information you claimed as CBI, did the EPA provide any express or implied assurance of confidentiality? If so, please provide the specific assurance(s) you received. For example, expressed assurances indicating that information will not be publicly disclosed could include legal authorities (regulation or statute), direct communications, class determinations, etc. Examples of implicit assurances could include a description of the specific context in which the information was received.

Yes, the Companies relied on both express and implied assurances of confidentiality, as the question above describes them, at the time the Information was submitted. Specifically, the Companies relied upon the assurances provided by relevant legal authorities, including FOIA and EPA's implementing regulations, which acknowledge explicit protections for confidential business information. 5 U.S.C. § 552(b)(4); 40 C.F.R. §§ 2.208, 2.210, and 2.304. The Companies also relied upon implied assurances of confidentiality based on the context and manner of submission of the information, which was made via a separate process – a secure FTP site created by EPA and provided to the Companies – from the remainder of the permit application in order to ensure its confidential treatment.

8. Did the EPA provide any expressed or implied indications at the time the information was submitted that the EPA would publicly disclose the information?

No, EPA provided no indications, either expressed or implied, at the time the Companies submitted the Information that EPA would publicly disclose it.

- 9. If you believe any submitted information to be a trade secret, please state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text you claim to be a trade secret.**

This question is not applicable as the Companies have not claimed any of the Information to be trade secret.

- 10. Are there any means by which a member of the public could obtain access to the information or readily discover the information claimed as confidential through reverse engineering?**

No, the Companies are unaware of any means by which a member of the public could access or readily discover the Information.

- 11. Please explain why the information claimed as confidential is not emissions data under the Clean Air Act, effluent data under the Clean Water Act, health and safety data under the Toxics Substances Control Act, or any other information that is prohibited from protection under regulation or statute.**

As described in Section I above, the Information consists of the Companies' corrective action assessments for wells encompassed in the project, as well as well identifier and location information from the well-specific plugging plans, none of which contains data on emissions regulated under the Clean Air Act, effluent regulated under the Clean Water Act, health and safety data under the Toxic Substances Control Act, or any other information prohibited from protection from disclosure by regulation or statute. The Companies note, in particular, that the Information does not contain any "information which deals with the existence, absence, or level of contaminants in drinking water" that would be ineligible for protection from disclosure under the Safe Drinking Water Act. *See* 40 C.F.R. § 2.304(e).

- 12. Explain any other issue or additional information you deem relevant to the EPA's determination.**

Please refer to the detailed information concerning relevant exemptions from disclosure under FOIA, EPA's implementing regulations, case law and explanations supporting a determination that the Information is exempt from disclosure under FOIA Exemption 4 in Section II of this letter.

* * *

CRC respectfully submits these comments to substantiate its claims to maintain the Information as confidential and protected from disclosure. As described throughout, CRC believes that the Information is entitled to confidential treatment based on the FOIA exemption provided in 5 U.S.C. section 552(b)(4), as well as EPA regulations 40 C.F.R. sections 2.208, 2.210, and 2.304. Disclosure of the Information described in Section I above will likely result in substantial harm to CRC's competitive position and commercial interests. CRC appreciates

Mr. David Albright

August 24, 2022

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EPA's consideration of these comments and will provide additional information to EPA upon request.

Should you have any questions, please contact me at Travis.Hurst@crc.com or at (661) 342-2409.

Sincerely,

THurst

Travis Hurst
Carbon TerraVault 1, LLC

CC: Nathaniel Boesch, EPA Region 9, Office of Regional Counsel, boesch.nathaniel@epa.gov
Elise Nord, EPA Region 9, nord.elise@epa.gov

Attachments:

Appendix 1: Injection and Monitoring Well Schematics and Plugging Details Elk Hills A1-A2 Storage Project (CBI Redactions Removed)

Appendix 2: P&A Procedure for Wells to be Abandoned Prior to Injection (Revised CBI Redacted Copy)